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FEBRUARY 1997

SOUTHWEST REGION AND SOUTHWEST FISHERIES SCIENCE CENTER DATA CONFIDENTIALITY HANDBOOK

By

Svein Fougner and Atilio Coan

ADMINISTRATIVE REPORT LJ-97-01

SOUTHWEST REGION

AND

SOUTHWEST FISHERIES SCIENCE CENTER

DATA CONFIDENTIALITY HANDBOOK

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SOUTHWEST REGION/SCIENCE CENTER DATA CONFIDENTIALITY HANDBOOK

FEBRUARY 1997

SECTION 1. PURPOSE AND SCOPE

This handbook describes policies and procedures for protecting the confidentiality of data submitted to, collected by, or in the possession of the Southwest Region and Southwest Fisheries Science Center, as authorized or required by NOAA Administrative Order 216-100 and regulations published at 50 CFR Part 600, Subpart E (Appendix I and II, respectively), which carry out the laws establishing confidentiality requirements. The laws and regulations regarding collection, use and disclosure of confidential fisheries data are very restrictive, and the penalties for unauthorized disclosure or release of confidential data are serious. The handbook is intended to inform Region and Center staff of their obligations for maintaining the confidentiality of data possessed by NMFS and of the penalties if confidentiality is not maintained. The handbook covers all confidential data, in any form and from any source, received, collected, maintained, or used by NMFS.

The handbook does not deal with physical protection of Automated Data Processing (ADP) equipment facilities, data files, and supporting utilities; protection of data electronically communicated between and among computer centers and remote terminal locations; or hardware and software safeguard. These subjects are addressed in the Department of Commerce ADP Security Manual. Responsibility for these matters rests with the ADP managers of the Region and Center.

SECTION 2. DEFINITIONS

As used in this handbook:

Aggregate or summary form means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

Agreement refers to cooperative agreements, contracts, or other binding forms of mutual commitment under a stated set of conditions made to achieve a specific objective with respect to maintaining confidential fisheries data.

Authorized use is that specific use authorized under the governing statute, regulation, order, contract or agreement.

Authorized user is any person who (a) has the need to collect or use confidential data in the performance of an official activity; (b) has read NOAA Administrative Order 216-100; and (c) has signed a statement of nondisclosure affirming the user's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure.

Center means the Southwest Fisheries Science Center facilities in La Jolla, Pacific Grove, Monterey, or Honolulu.

Confidential data means data that are identifiable with any person, that reveal the business practices of an individual, and that are prohibited by law from being disclosed to the public. The release of these data could place the supplier or subject of the data at a competitive disadvantage and could result in adverse impacts on that person's business.

Data refers to information used as a basis for reasoning, discussion, compilation, or calculation that a person may submit, either voluntarily or as required by statute or regulation.

Maintenance is defined as the procedures required to keep confidential data secure from the time the source documents are received by NMFS to their ultimate disposition, regardless of format. (See National Institute of Standards and Technology "Computer Security Publications, List 91" for guidance.)

Manual Document refers to any storage medium on which is recorded alphabetic, numeric and/or special characters in a form in which such characters may be read by the human eye. Examples of manual documents are (1) printed forms or notebooks with handwritten or typed entries, (2) punched cards and punched paper tape (whether interpreted or not), (3) graphs, maps, charts, tables and listings (whether prepared by hand, type-written, word processor, computer or other device), and (4) any photographic or other reproduction, facsimile or extract thereof.

Non-Manual Document refers to any storage medium that contains data in a form such that the characters or character representations cannot be read by the human eye. Examples are magnetic and electronic storage media for data that are digitally encoded or in analog form.

Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), or any Federal, State, local, or foreign government or any entity of such governments, including Regional Fishery Management Councils (Councils).

Region means the Southwest Regional offices in Long Beach, Santa Rosa, Honolulu, and Pago Pago.

State employee means any member of a State agency responsible for developing and monitoring the State's marine fisheries program or Marine Mammal Protection Act (MMPA) program.

SECTION 3. GENERAL REQUIREMENTS

Only individuals are designated "authorized users" of confidential data. Access is not provided to offices or organizations.

Confidential data shall only be disclosed to the public if required by the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, or by court order.

Disclosure of data pursuant to a subpoena issued by an agency of competent jurisdiction is a lawful disclosure. However, disclosure pursuant to a subpoena must be approved by NOAA General Counsel.

Individual identifiers shall be retained with data, unless the permanent deletion is consistent with the needs of NMFS and good scientific practice (See Section 4.06).

A notice is required on all report forms that request data. The notice must comply with 5 U.S.C. 552a(e)(3) and Paperwork Reduction Act requirements in NAO 216-8, Information Collections and Requirements Needing Office of Management and Budget Clearance. (See E.O. 12600 of June 23, 1987, for additional information regarding the rights of submitters to designate commercial confidential data at the time of submission.)

SECTION 4. OPERATIONAL PROCEDURES

.01 Responsibilities

a. Southwest Regional Director and Science Director

The Regional Director has the overall responsibility to maintain the confidentiality of all data collected, maintained, and disclosed within and by the Region and Center.

The Regional Director and Science Director will designate Data Confidentiality Coordinators in their respective units whose responsibility it is to collaborate to

ensure consistent application of confidentiality standards in the Region and the Center.

The Regional Director will determine whether a contractor is to be provided with access to confidential data.

The Regional Director may enter into agreements on behalf of NMFS with States, educational institutions, and other contractors for data collection, management, and use of confidential data consistent with the requirements of NOAA Administrative Order 216-100. Any such agreements shall be cleared by the Southwest NOAA General Counsel or the Department of Commerce, as appropriate.

b. Data Confidentiality Coordinators

The Coordinators will maintain and continually update a list of authorized users of confidential data in the Region and Center, respectively, and will exchange these lists.

The Coordinators will maintain a Central Registry containing the names and other data pertaining to persons who handle confidential data and whose need-to-know has been established, and who have signed the "Standard Statement of Nondisclosure" (see Appendix I). The nondisclosure statement will be signed by all persons who collect or access confidential data. The Central Registry is controlled as a confidential document. Information contained in it may be revealed only to persons whose names are currently on the Central Registry. The Central Registry will be consulted by designated staff whenever it becomes necessary to determine whether a person has a need-to-know that warrants access to confidential data. Authorized persons may consult the Central Registry by contacting the appropriate Coordinator in person or by telephone.

The Coordinators will develop a catalog/inventory system of all confidential data received including: the type of source document; the authority under which each item of data was collected or obtained; any statutory or regulatory restriction(s) which may apply; and routing from the time of receipt until final disposition.

The Coordinators will develop an appropriate coding system for each set of confidential data so that access to data that identify, or could be used to identify, the person or business of the submitter is controlled by the use of one or more coding system(s). Lists that contain the codes shall be kept secure.

The Coordinators will provide a report annually to the Region and Center Directors concerning this Handbook and recommend any changes needed to be made to ensure

its effectiveness and conformance with current laws, NOAA administrative requirements and NMFS regulations.

c. Managers and Supervisors

Managers and supervisors will ensure that staff handling confidential data receive and read the handbook and understand the requirements of NOAA Administrative Order 216-100.

Managers and supervisors, working with the Coordinators, will determine which staff should be designated authorized users of confidential data for specific purposes.

Managers and supervisors shall ensure that any of their staff departing their unit has certified that all confidential data which the employee possessed have been retained within the Region or Center.

d. Individual Staff

Each person needing to be designated an authorized user will receive a copy of this handbook, read NOAA Administrative Order 216-100, and sign a nondisclosure statement acknowledging the obligation to maintain data confidentiality and the penalties for unauthorized disclosure.

New staff members will be provided with a copy of this handbook as they assume their duties. With the advice of the new staff supervisor, a determination shall be made whether the new staff person should have access to confidential data. If so, he/she shall sign a nondisclosure form before being designated an authorized user.

Each authorized user will be issued a unique Access Number at the time of completion of the Statement of Nondisclosure. This Access Number will be confidential, and will be used as identification when making telephone inquiries. The Access Number will not be revealed to others, including other authorized users.

.02 Data Collection

All Region and Center staff members collecting confidential data will be required to sign a nondisclosure statement acknowledging their responsibilities to maintain data confidentiality and the penalties for unauthorized disclosure of data.

Any State agency staff member collecting confidential data on behalf of NMFS under a data agreement shall sign and provide to the Regional Director either a NMFS nondisclosure form, or a statement at least as protective as the NMFS form,

acknowledging the requirements of Federal laws and policies and the Federal penalties for unauthorized disclosure.

Staff members collecting confidential data must maintain all documents containing confidential data in secure facilities, and may not disclose confidential data, whether recorded or not, to anyone not authorized to receive and handle such data.

Each contractor employee collecting or processing confidential data on behalf of the Regional Director will be required to read, date, and sign a statement of nondisclosure, that affirms the employee's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure of the data. Upon signature, the employee's name will be placed on record as an "authorized user," and the employee will be issued certification.

Data collected by a contractor must be transferred in a timely manner to authorized Federal employees; no copies of these data may be retained by the contractor. NMFS may permit contractors to retain aggregated data. A data return clause shall be included in the agreement. All procedures applicable to Federal employees must be followed by contractor employees collecting data with Federal authority.

.03 Data Access

a. NMFS Staff.

Region and Center staff members who are designated authorized users and who have signed nondisclosure forms will be provided with access to the data consistent with their needs.

b. State Staff.

Staff members of a State with a data exchange agreement with the Southwest Region who have been found to need access to NMFS confidential data will be provided with such access provided they have signed NMFS nondisclosure statements, or another form or statement at least as protective as the NMFS form, acknowledging Federal data confidentiality requirements and Federal penalties for unauthorized disclosure.

In cases in which a State has entered into an agreement with another State(s), the Southwest Region will facilitate transfer or exchange of State-collected data in its possession if:

(1) NMFS has written authorization for data transfer from the head of the collecting State agency; and

(2) the collecting State has provided NMFS a list of authorized users in the recipient State(s); and

(3) the collecting State agrees to hold the United States Government harmless for any suit that may arise from the misuse of the data.

c. Council Staff and Members.

Staff and members of a Regional Fishery Management Council may be designated authorized users and be provided access to such data, provided that (1) they have signed nondisclosure forms and (2) the Council's procedures for ensuring the confidentiality of data have been furnished to the Regional Director in the year in which access is provided. However, data submitted in accordance with a fishery management plan will be provided to a Council member only after determining, under 50 CFR 603.5(d), that the member will not gain personal or competitive advantage from access to the data and that the suppliers of the data will not be placed at a competitive disadvantage by public disclosure of the data at Council meetings or hearings.

d. Contractors

Pursuant to an agreement with NMFS, a NMFS contractor (including universities, Sea Grant investigators, etc.) may be granted "authorized user" status consistent with this Order if the use furthers the mission of NMFS.

The Regional Director will notify the contractor of his/her decision on access in writing within 30 calendar days after receipt of a request.

Contingent upon approval, the contractor will be provided with details regarding conditions of data access, any costs involved, formats, timing, and security procedures. If the request is denied, the reason(s) for denial will be given by the NMFS office involved. The denial will not preclude NMFS consideration of future requests from the contractor.

If access is granted, language in the agreement specifically dealing with confidentiality of data will be required. The language shall include all of the relevant portions of NOAA Administrative Order 216-100 and shall prohibit the further disclosure of the data. No data may be retained beyond the termination date of the agreement; and any disclosure of data derived from the accessed confidential data must be approved by NMFS.

The Regional Director shall reserve in all agreements a right of prior review of any report or other product based on or derived from confidential data to ensure protection against unauthorized inadvertent release of confidential data.

.04 Submitters

The Privacy Act allows for data to be released back to the submitter upon receipt and verification of a written request stating the data required.

.05 Maintenance of Confidential Data

Maintenance Procedures

a. Responsibility.

Employees are required to be knowledgeable of the security procedures for handling confidential data in this handbook and the consequences of unauthorized removal or disclosure.

b. Database deletion.

The permanent deletion of individual identifiers from a database shall be addressed on a case-by-case basis. Identifiers may only be deleted after:

(1) Future uses of data have thoroughly been evaluated, e.g., the need for individual landings records for allocating shares under an individual transferable quota program;

(2) Consultation with the agency(s) that is collecting data (if other than NMFS), the relevant Council(s), and the NMFS Senior Scientist; and

(3) Concurrence by the Assistant Administrator has been received prior to deletion.

c. Marking.

Manual documents will be conspicuously marked with the words, "FISHERIES CONFIDENTIAL" as soon as statutory confidential data are recorded on them. Whenever practicable, the marking will be in letters not less than one-half inch in height, and will be placed at the top and bottom center of every page, in red ink.

Small documents that are handled in large numbers (such as punched cards and printed forms) may be placed in appropriate containers that have covers, flaps or lids, and the protective marking may be placed conspicuously on the outside of the container. Protective markings, rubber stamps on which they are embossed, and documents on which they appear will be protected from viewing by unauthorized persons. Documents containing both confidential and nonconfidential data will bear on each page the protective marking of the most sensitive data on that page.

d. Shipping and Mailing.

Confidential data may be shipped or mailed by any conventional medium. Ordinary mail, Parcel Post, Air Express, United Parcel Service and similar media are all acceptable. Couriers which are not authorized access to the material may be used, as long as the materials are securely sealed in such a manner as to make undiscovered tampering unlikely. All confidential data will be double-wrapped or double-enveloped, with the full address of the recipient on both the inner and outer wrapping or envelope. The inner wrapping or envelope will be clearly marked in red ink with the protective marking. The protective marking will not appear on the outside of the package, nor will it be visible through the outer wrapper or envelope. These procedures apply to inter-office delivery of confidential data.

e. Inter-office Transfer.

A common security violation is for authorized users to carry confidential data through the hallways with the protective marking exposed. The proper security precaution is to place it in an envelope or fold it in such a way that the marking is not seen by others.

f. Reproduction.

Copies of documents containing confidential data must be kept to the minimum number required for efficient operations. As a general rule, only the originator of a document should be permitted to make a copy or copies of it in whole or in part. The only exception to this is when it is clearly imprinted, as in the case where data are incorporated into a digital data file. Special written arrangements concerning reproduction will be made when manual documents are provided to persons outside NMFS.

g. Storage.

Confidential data will be protected continuously from unauthorized knowledge, viewing or access. A common breach of security is to fail to cover confidential data

when an unauthorized person enters the room. This can be accomplished in an unobtrusive manner so as not to bring embarrassment to the visitor. Another common error is to discuss confidential matters in public areas or over the telephone within a possible hearing distance of unauthorized persons. When confidential documents are not in use they will be placed in a heavy, lockable container (file cabinet, locker, safe or desk) and secured by locking the container. Such documents should never be allowed to remain on a desk top or in any unsecured location unguarded for any length of time. The lock may be of the built-in key type, or may be a padlock or a three-position, dial-type combination lock.

Confidential documents must not be stored in the same drawer with documents that do not contain confidential data. Under no circumstances will confidential documents be stored in any container to which unauthorized persons have access.

h. Disposition/Destruction.

Confidential data are exempt from automatic decontrol. That is, there is not a prescribed period of years beyond which FISHERIES CONFIDENTIAL data are releasable to the general public or to other persons who are not registered as authorized users at that future time. Confidential data that are no longer needed will be destroyed by any appropriate means that will insure their confidentiality.

Documents containing confidential data on one side will not be recycled as scratch pads or for other uses. Documents bearing protective markings should never be placed in trash receptacles for routine disposal.

i. Log Books.

A record or log will be maintained in each operating area where confidential data are received or dispatched. The log will contain a descriptive title of each confidential document received or dispatched, the date and time of the action, the number of pages or individual items involved, and the number of copies. The log will also show from whom each document was received or to whom it was dispatched. Logs will be filed in a secure place in a manner similar to that used for confidential data. They may be destroyed after four years.

j. Safeguarding of Non-Manual Documents.

(1) The physical safeguarding rules for storage devices bearing digital or analog representations of confidential data (such as magnetic tapes, discs, floppy discs, cartridges and magnetic cards) are the same as those for manual documents described above.

(2) Procedures for controlling access to, and safeguarding of, confidential data while the data are stored on the aforementioned devices is covered in the Department of Commerce ADP Security Manual. Implementation of such procedures is the responsibility of each ADP facility manager.

SECTION 5. CONFLICT OF INTEREST

Employees are prohibited by Department of Commerce employee conduct regulations (15 CFR part 0) and by ethics regulations applicable to the Executive Branch (5 CFR 2635.703) from using nonpublic information subject to this Order for personal gain, whether or not there is a disclosure to a third party.

SECTION 6. PENALTIES AND DISCIPLINARY ACTION

Persons who make unauthorized disclosure of confidential data may be subject to civil penalties or criminal prosecution under several statutes as listed in the Administrative Order. Persons may be subject to disciplinary action, including removal, for failure to comply with the Administrative Order. Prohibited activities include, but are not limited to, unlawful disclosure or use of the data, and failure to comply with implementing regulations or statutory prohibitions relating to the collection, maintenance, use and disclosure of data covered by this Handbook.

APPENDIX I

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

TRANSMITTAL

NUMBER: NAO 216-100, Amendment 1 DATE: July 29, 1994

SUBJECT: PROTECTION OF CONFIDENTIAL FISHERIES STATISTICS

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1. THIS TRANSMITS:

NAO 216-100, Amendment 1, Protection of Confidential Fisheries Statistics, dated July 29, 1994.

2. PURPOSE:

This transmittal transmits a definitions page that was omitted from the original directive.

3. FILING INSTRUCTIONS:

Please insert this page as page 2; repaginate the remaining pages in the directive by making pen-and-ink changes. Please file this amendment in proper numerical sequence.

National Oceanic and Atmospheric Administration	NOAA Administrative Order 216-100	
NOAA ADMINISTRATIVE ORDER SERIES	DATE OF ISSUANCE July 26, 1994	EFFECTIVE DATE July 18, 1994

SUBJECT

PROTECTION OF CONFIDENTIAL FISHERIES STATISTICS

SECTION 1. PURPOSE.

.01 This Order:

a. prescribes policies and procedures for protecting the confidentiality of data submitted to and collected by the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS) as authorized or required by law;

b. informs authorized users of their obligations for maintaining the confidentiality of data received by NMFS;

c. provides for operational safeguards to maintain the security of data; and

d. states the penalties provided by law for disclosure of confidential data.

SECTION 2. SCOPE.

This Order covers all confidential data received, collected, maintained, or used by NMFS.

SECTION 3. DEFINITIONS.

.01 Access to data means the freedom or ability to use data, conditioned by a statement of nondisclosure and penalties for unauthorized use.

.02 Aggregate or summary form means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

.03 Agreement refers to all binding forms of mutual commitment under a stated set of conditions to achieve a specific objective.

.04 Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or a designee authorized to have access to confidential data.

.05 Authorized Use/User.

a. Authorized use is that specific use authorized under the governing statute, regulation, order, contract, or agreement.

b. An authorized user is any person who, having the need to collect or use confidential data in the performance of an official activity, has read this Order and has signed a statement of nondisclosure affirming the user's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure.

.06 Confidential data means data that are identifiable with any person, accepted by the Secretary, and prohibited by law from being disclosed to the public. The term "as used" does not convey data sensitivity for national security purposes [See Executive Order (E.O.) 12356 dated April 2, 1982].

.07 Data refers to information used as a basis for reasoning, discussion, or calculation that a person may submit, either voluntarily or as required by statute or regulation.

.08 GC means the Office of General Counsel, NOAA.

.09 Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of such governments, including Regional Fishery Management Councils (Councils).

.10 Public means any person who is not an authorized user.

.11 Region means NMFS regional field offices, Fisheries Science Centers, and associated laboratories.

.12 Source document means the document, paper, or electronic format on which data are originally recorded.

.13 State employee means any member of a State agency responsible for developing and monitoring the State's program for fisheries or Marine Mammal Protection Act (MMPA) program.

.14 Submitter means any person or the agent of any person who provides data to NMFS either voluntarily or as required by statute or regulation.

SECTION 4. POLICY.

.01 For data subject to this Order, it is NMFS policy that:

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

TRANSMITTAL

NUMBER: NAO 216-100 DATE: July 26, 1994

SUBJECT: PROTECTION OF CONFIDENTIAL FISHERIES STATISTICS

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NAO 216-100, Protection of Confidential Fisheries Statistics dated

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c. provides for operational safeguards to maintain the security of data; and

d. states the penalties provided by law for disclosure of confidential data.

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.04 Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or a designee authorized to have access to confidential data.

a. confidential data shall only be disclosed to the public if required by the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, or by court order. Disclosure of data pursuant to a subpoena issued by an agency of competent jurisdiction is a lawful disclosure. Disclosure pursuant to a subpoena must be approved by GC;

b. individual identifiers shall be retained with data, unless the permanent deletion is consistent with the needs of NMFS and good scientific practice [See Section 6.02c]; and

c. a notice is required on all report forms requesting data and must comply with 5 U.S.C. 552a(e)(3) and Paperwork Reduction Act requirements in NAO 216-8, Information Collections and Requirements Needing Office of Management and Budget Clearance. [See E.O. 12600, dated June 23, 1987, for additional information regarding the rights of submitters to designate commercial confidential data at the time of submission.]

SECTION 5. OPERATIONAL RESPONSIBILITIES.

.01 The Regional Director of each region (or, in the case of headquarters, each Office Director) has the responsibility to maintain the confidentiality of all data collected, maintained, and disclosed by the respective region.

.02 Each region shall submit to the Assistant Administrator specific procedures governing the collection, maintenance, and disclosure of confidential data. These documents shall be compiled as regional handbooks following these guidelines and standards:

a. handbooks are to be developed in detail to ensure the maintenance of confidential data on a functional basis in each region; and

b. handbooks shall be coordinated through the National Data Management Committee (a NMFS group established by the Assistant Administrator to develop data management policies and procedures) and reviewed annually. The regional handbooks will address, at minimum, the contents of Sections 6-7.

SECTION 6. PROCEDURES.

.01 Data Collection. To collect data, the Secretary may use Federal employees, contractor employees, or, pursuant to an agreement, State employees.

a. General Requirements.

1. Personnel authorized to collect Federal data must maintain all documents containing confidential data in secure facilities; and

2. may not disclose confidential data, whether recorded or not, to anyone not authorized to receive and handle such data.

b. Specific Requirements.

1. Each Federal or contractor employee collecting or processing confidential data will be required to read, date, and sign a statement of nondisclosure, that affirms the employee's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure of the data. Upon signature, the employee's name will be placed on record as an "authorized user," and the employee will be issued certification.

2. Data collected by a contractor must be transferred timely to authorized Federal employees; no copies of these data may be retained by the contractor. NMFS may permit contractors to retain aggregated data. A data return clause shall be included in the agreement. All procedures applicable to Federal employees must be followed by contractor employees collecting data with Federal authority.

3. Under agreements with the State, each State data collector collecting confidential data will sign a statement at least as protective as the one signed by Federal employees, which affirms that the signer understands the applicable procedures, regulations, and the penalties for unauthorized disclosure.

.02 Maintenance.

a. Maintenance is defined as the procedures required to keep confidential data secure from the time the source documents are received by NMFS to their ultimate disposition, regardless of format. [See National Institute of Standards and Technology "Computer Security Publications, List 91" for guidance.]

b. Specific procedures in regional handbooks must deal with the following minimum security requirements, as well as any others that may be necessary because of the specific data, equipment, or physical facilities:

1. the establishment of an office or person responsible for evaluating requests for access to data;

2. the identifications of all persons certified as authorized users. These lists shall be kept current and reviewed on an annual basis;

3. the issuance of employee security rules that emphasize the confidential status of certain data and the consequences of unauthorized removal or disclosure;

4. the description of the security procedures used to prevent unauthorized access to and/or removal of confidential data;

5. the development of a catalog/inventory system of all confidential data received including the type of source document; the authority under which each item of data was collected; any statutory or regulatory restriction(s) which may apply; and routing from the time of receipt until final disposition; and

6. the development of an appropriate coding system for each set of confidential data so that access to data that identifies, or could be used to identify, the person or business of the submitter is controlled by the use of one or more coding system(s). Lists that contain the codes shall be kept secure.

c. The permanent deletion of individual identifiers from a database shall be addressed on a case-by-case basis. Identifiers may only be deleted after:

1. future uses of data have thoroughly been evaluated, e.g., the need for individual landings records for allocating shares under an individual transferable quota program;

2. consultation with the agency(s) collecting data (if other than NMFS), the relevant Council(s), and NMFS Senior Scientist; and

3. concurrence by the Assistant Administrator has been received prior to deletion.

.03 Access to Data Subject to This Order.

a. General Requirements. In determining whether to grant a request for access to confidential data, the following information shall be taken into consideration:

1. the specific types of data required;

2. the relevance of the data to the intended uses;

3. whether access will be continuous, infrequent, or one-time;

4. an evaluation of the requester's statement of why aggregate or non-confidential summaries of data would not satisfy the requested needs; and

5. the legal framework for the disclosure, in accordance with GC and this Order.

b. Within NMFS. NMFS employees requesting confidential data must have certification as being authorized users for the particular type of data requested.

c. Councils. Upon written request by the Council Executive Director:

1. "authorized user" status for confidential data collected under the Magnuson Fishery Conservation and Management Act (Magnuson Act) may be granted to a Council for use by the Council for conservation and management purposes consistent with the approval of the Assistant Administrator as described in 50 CFR 603.5;

2. "authorized user" status for confidential data, collected under the Magnuson Act and MMPA, will be granted to Council employees who are responsible for Fishery Management Plan development and monitoring; and

3. Councils that request access to confidential data must submit, on an annual basis, a copy of their procedures for ensuring the confidentiality of data to the region, or, in the case of intercouncil fisheries, regions. The procedures will be evaluated for their effectiveness and, if necessary, changes may be recommended. As part of this procedure, an updated statement of nondisclosure will be included for each employee and member who requires access to confidential data.

d. States.

1. Requests from States for confidential data shall be directed in writing to the NMFS office that maintains the source data.

2. Each request will be processed in accordance with any agreement NMFS may have with the State:

(a) confidential data collected solely under Federal authority will be provided to a State by NMFS only if the Assistant Administrator finds that the State has authority to protect the confidentiality of the data comparable to, or more stringent than, NMFS' requirements; and

(b) the State will exercise its authority to limit subsequent access and use of the data to those uses allowed by authorities under which the data was collected.

3. If the State has no agreement with NMFS for the collection and exchange of confidential data, the request shall be treated as a public request and disclosure may be denied subject to FOIA or the Privacy Act.

4. Where a State has entered into a cooperative exchange agreement with another State(s), NMFS will facilitate transfer or exchange of State-collected data in its possession if:

(a) NMFS has written authorization for data transfer from the head of the collecting State agency;

(b) the collecting State has provided NMFS a list of authorized users in the recipient State(s); and

(c) the collecting State agrees to hold the United States Government harmless for any suit that may arise from the misuse of the data.

e. Contractors.

1. Pursuant to an agreement with NMFS, a NMFS contractor (including universities, Sea Grant investigators, etc.) may be granted "authorized user" status consistent with this Order if the use furthers the mission of NMFS.

2. The region will notify the contractor of its decision on access in writing within 30 calendar days after receipt of the request.

3. Contingent upon approval, the contractor will be provided with details regarding conditions of data access, any costs involved, formats, timing, and security procedures. If the request is denied, the reason(s) for denial will be given by the NMFS office involved. The denial will not preclude NMFS consideration of future requests from the contractor.

4. If access is granted, language in the agreement specifically dealing with confidentiality of data will be required. The language shall include all of the relevant portions of this Order and shall prohibit the further disclosure of the data. No data may be retained beyond the termination date of the agreement; and any disclosure of data derived from the accessed confidential data must be approved by NMFS.

5. Each agreement shall be reviewed by GC prior to its execution, and shall, to the extent possible, be consistent with the model agreement contained in Appendix D.

f. Submitters. The Privacy Act allows for data to be released back to the submitter upon receipt and verification of a written request stating the data required.

04. Requests for Confidential Data. NMFS is authorized to collect data under various statutes [See Appendix A]. Two types of statutes govern the disclosure of confidential data collected by the Federal Government, those that contain specific and non-discretionary language within the Act, and those that provide overall guidance to the Federal Government. Sections of these Acts that deal with exceptions to disclosure may be found in Appendix B.

a. Magnuson Act and MMPA.

1. Data collected under 16 U.S.C. 1853 (a) or (b), and 16 U.S.C. 1383a,(c),(d),(e),(f),or (h) will be handled in the following manner:

(a) data will only be disclosed to Federal employees and Council employees who are responsible for management plan development and monitoring; State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; a Council for conservation and management purposes [not applicable for MMPA data]; or when required by court order. [See 50 CFR 229.10 and part 603];

(b) Council advisory groups are not permitted access to such confidential data [See 50 CFR 601.27(b)];

(c) requests from States that do not have an agreement with the Secretary will be processed in accordance with the Privacy Act or FOIA; and

(d) data collected by an observer under 16 U.S.C. 1853 (a) or (b) are not considered to have been "submitted to the Secretary by any person," and, therefore, are not confidential under Section 6.04.a of this Order. Data collected by an observer may be withheld from disclosure under the Privacy Act, or subsections (b)(3),(4),(5),(6), or (7) of FOIA.

2. Confidential data submitted to the Secretary under other Sections of the Magnuson Act or MMPA may only be disclosed in accordance with the Privacy Act or FOIA. Types of data and the collection authority may include among others:

(a) Processed Product Data -- 16 U.S.C. 1854(e);

(b) Fish Meal and Oil, Monthly -- 16 U.S.C. 1854(e);

(c) Data Collected Under State Authority and Provided to NMFS -- 16 U.S.C. 1854(e); and

(d) Tuna-Dolphin Observer Program -- 16 U.S.C. 1361 *et seq.*

b. South Pacific Tuna Act. Data collected under South Pacific Tuna Act 16 U.S.C. 973j is protected from disclosure to the public in accordance with section 973j(b).

c. Other Statutes. Confidential data collected under other NMFS programs as authorized by statute other than South Pacific Tuna Act (16 U.S.C 973j), MMPA (16 U.S.C. 1361 *et seq.*), and Magnuson Act (16 U.S.C. 1801 *et seq.*), may only be disclosed to the public in accordance with the Privacy Act and FOIA. Types of data and the collection authority may include among others:

(1) Monthly Cold Storage Fish Report -- 16 U.S.C. 742(a);

(2) Market News Data -- 16 U.S.C. 742(a); and

(3) Seafood Inspection Data -- 7 U.S.C. 1621 *et seq.*

d. Special Procedures.

1. Cold Storage Summary Reports. NMFS publishes monthly cold storage holdings of fishery products. Advance knowledge of the content of these reports could give those who trade in the products an opportunity to gain competitive advantage. Therefore, in addition to the confidential protection provided to individual reports, the monthly summary report will not be disclosed to the public until 3:00 p.m. Eastern Time of the official release date. Release dates for these data are published 1 year in advance in November, and can be obtained from the NMFS Fisheries Statistics Division.

2. Surplus Commodity Purchases by USDA. NMFS and the Department of Agriculture (USDA) have an interagency agreement relating to the purchase of surplus fishery products. NMFS is responsible for providing confidential data and recommendations to the USDA regarding these purchases. Advance knowledge of these data could cause a competitive advantage or disadvantage to the general public, fishing industry, and the program. Therefore, all NMFS personnel engaged in the surplus commodity purchase program will be

required to sign a specific "USDA Responsibility Statement." A copy will be maintained in the Office of Trade Services.

3. Agreements for Disclosure of Confidential Data. A letter of agreement may authorize the disclosure of confidential data when both the Government and the submitter agree to disclosure of the data. The need to provide security for the data will vary depending on the type of data collected and the form of the disclosure. Disclosure can be undertaken if all the following conditions are met:

(a) the person has agreed in writing to the disclosure and is aware that disclosure is irrevocable;

(b) the recipient has been informed in writing of the sensitivity of the data; and

(c) the wording of the agreement has been approved by GC.

.05 Disposal. NAO 205-1, NOAA Records Management Program, shall govern the disposition of records covered under this Order.

SECTION 7. PENALTIES.

.01 Civil and Criminal. Persons who make unauthorized disclosure of confidential data may be subject to civil penalties or criminal prosecution under:

a. Trade Secrets Act (18 U.S.C. 1905);

b. Privacy Act (5 U.S.C. 552a(i)(1));

c. Magnuson Act (16 U.S.C. 1858); and

d. MMPA (16 U.S.C. 1375).

.02 Conflict of Interest. Employees are prohibited by Department of Commerce employee conduct regulations [15 CFR part 0] and by ethics regulations applicable to the Executive Branch [5 CFR 2635.703] from using nonpublic information subject to this Order for personal gain, whether or not there is a disclosure to a third party.

.03 Disciplinary Action. Persons may be subject to disciplinary action, including removal, for failure to comply with this Order. Prohibited activities include, but are not limited to, unlawful disclosure or use of the data, and failure to comply with implementing regulations or statutory prohibitions relating to the collection, maintenance, use and disclosure of data covered by this Order.

SECTION 8. EFFECT ON OTHER ISSUANCES.

None.

Director, Office of Administration

Office of Primary Interest:
National Marine Fisheries Service
Office of Research and Environmental Information
Fisheries Statistics Division (F/RE1)

STATUTES

NMFS is authorized to collect biological, economic, social, and other data under the following statutes, among others:

a. Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627;

b. Agricultural Trade Development and Assistance Act of 1954, 7 U.S.C. 1704;

c. Anadromous Fish Conservation Act, 16 U.S.C. 757-757f;

d. Atlantic Coast Fish Study for Development and Protection of Fish Resources, 1950, 16 U.S.C. 760a;

e. Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971i;

f. Eastern Pacific Tuna Licensing Act of 1984, 16 U.S.C. 972-972h;

g. Endangered Species Act, 16 U.S.C. 1531-1543;

h. Farrington Act of 1947, 16 U.S.C. 758-758d;

i. Fish and Wildlife Act of 1956, 16 U.S.C. 742(a) *et seq*;

j. Fish and Wildlife Coordination Act of 1934, 16 U.S.C. 661-666c;

k. Fishery Market News Service Act of 1937; 50 Stat. 296;

l. Fur Seal Act, 16 U.S.C. 1151-1175;

m. Interjurisdictional Fisheries Act of 1986, 16 U.S.C. 4101 *et seq*;

n. Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*;

o. Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq*;

p. Marine Migratory Gamefish Act of 1959, 16 U.S.C. 760e;

q. South Pacific Tuna Act of 1988, 16 U.S.C. 973-973n; and

r. Tuna Conventions Act of 1950, 16 U.S.C. 951-961.

APPENDIX B

PRIMARY PROTECTIVE AUTHORITIES

a. Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1853d, (Magnuson Act).

Data required as part of a reporting requirement under the Magnuson Act are protected from disclosure to the public by section 303(d) which provides: "Any statistic submitted to the Secretary by any person in compliance with any requirement under subsections 303(a) and (b) shall be confidential and shall not be disclosed except:

(1) to Federal employees and Council employees who are responsible for management plan development and monitoring;

(2) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; or

(3) when required by court order.

The Secretary shall, by regulation [See 50 CFR part 603], prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any statistic submitted in compliance with a requirement under subsection (a) or (b)."

b. Marine Mammal Protection Act, 16 U.S.C. 1383a(j), (MMPA)

Certain MMPA data are protected from disclosure by section 114(j) which provides: "Any information collected under subsection (c), (d), (e), (f), or (h) of this section shall be confidential and shall not be disclosed except:

(A) to Federal employees whose duties require access to such information;

(B) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

(C) when required by court order; or

(D) in the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.... The Secretary shall prescribe such procedures [See 50 CFR 229.10] as may be necessary to preserve such confidentiality, except that the Secretary shall release or make public any such information in aggregate, summary, or other form which does not directly or indirectly disclose the identity or business of any person."

c. South Pacific Tuna Act 16 U.S.C. 973j(b).

Certain data are protected from disclosure by section 973j(b) which provides: "Information provided by license holders in Schedules 5 and 6 of Annex 1 of the Treaty shall be provided to the Secretary for transmittal to the Administrator and to an entity designated by the license holder. Such information thereafter shall not be released and shall be maintained as confidential by the Secretary, including information requested under Section 552 of Title 5, unless disclosure is required under court order or unless the information is essential for an enforcement action under section 973c, 973h(c), or 973i of this title, or any other proper law enforcement action."

d. Freedom of Information Act, 5 U.S.C. 552 (FOIA)

Although FOIA generally requires agencies to make records available to any person requester, it does provide specific exemptions for which an agency may deny disclosure as follows:

"...(b) This section does not apply to matters that are... (3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes,..."

e. Trade Secrets Act 18 U.S.C. 1905

The Trade Secrets Act forbids disclosure only to the extent that other laws do not require the information be released. The courts have interpreted its protection to be virtually coextensive with the exception of FOIA exemption 4.

The Trade Secrets Act states: "Whoever, being an officer or employee of the United States or of any department or agency thereof, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314), publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined not more than $1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment."

f. Privacy Act, 5 U.S.C. 552a(b)

Privacy Act records are to be handled according to NAO 205-15, Privacy Act.

The Privacy Act prohibits disclosure stating: "...(b) Conditions of Disclosure. No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(f) of title 31.

g. Government in the Sunshine Act 5 U.S.C. 552b(c)

The Sunshine Act provides for open access to meetings held by the government. The Act provides for certain cases when, with prior notice to the public, a meeting may be closed.

Authorized users of NMFS confidential data should be aware of these exceptions when holding an open meeting. The Act states:

"Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to ...(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute:

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;..."

APPENDIX C

STATEMENT OF NONDISCLOSURE

I have read the NOAA Administrative Order 218-4, Protection of Confidential Fisheries Statistics, and understand its contents.

I will not disclose any data identified as confidential to any person(s), except as directed by the Assistant Administrator for Fisheries. I am fully aware of the civil and criminal penalties for unauthorized disclosure, misuse, or other violation of the confidentiality of such data.

I understand that I may be subject to criminal and civil penalties under provisions of Titles 5 U.S.C. 552 and 18 U.S.C. 1905, which are the primary Federal statutes prohibiting unauthorized disclosure of confidential data. I may also be subject to civil penalties for improper disclosure of data collected under the Magnuson Act or the MMPA.

_____ _____

Name typed, date Signature

Affiliation: (Check one)
___ NMFS
___ Other Federal
___ State
___ Council Staff
___ Council Member
___ Contractor
___ Grantee

Type of Data:
___ Source
___ Subregional
___ Regional
___ Multiregional
___ Special

Access Number:_____

_____
Signature
Designated NMFS Official

APPENDIX D

MODEL
AGREEMENT OF ACCESS

I. Purpose

The purpose of this agreement is to outline the understanding between the National Marine Fisheries Service (NMFS) and the _____ regarding access to, subsequent storage, and usage of confidential data provided to the Secretary of Commerce.

II. References and Authorities

[Cite specific Authorities]

III. Definitions

The terms in this agreement, except where specifically defined below, have the meanings that are prescribed in 50 CFR 601.2.

A. The term "detailed statistics" refers solely to the use of raw unaggregated data submitted in confidence in response to Federal requirements and/or requests.

B. The term "landings data" refers to those data related to the catch, landings, and value of commercial fishery products collected through the use of "weigh-out" slips by agents of the NMFS or the term "port sampling data" refers to those data related to the catch, fishing effort, etc., of commercial fishermen collected by means of personal interviews by agents of the NMFS.

IV. Responsibilities of the Parties

A. Contractor

1. Disclosure of the data made available under this agreement to anyone other than a duly authorized NMFS or _____ employee is forbidden unless specifically provided for herein. A list of _____ employees and agents authorized to receive the data is included in this agreement. Any additions or deletions must be approved by the NMFS _____ Regional Office.

For the purposes of access to, storage, and disclosure of the subject data, agents and employees of the contractor shall be considered as agents of the Federal Government and shall be subject to the provisions of sections 1905 and 201-209 of Title 18 of the United States Code (commonly referred to as the Trade Secrets Laws and Conflict of Interests Laws respectively).

2. Contractor safeguards of data include:

a. Signed, witnessed, and approved certificates from each employee and prospective agent of the

contractor as to their awareness of the provisions of 18 U.S.C. 1905 and of sections 201-209 for misuse of raw data of a confidential nature. Each approved certificate will be appended to, and made a part of the agreement.

b. Each certificate shall continue in force for the duration of the employee or agent's relationship with the contractor; and for 1 year thereafter; upon termination of the relationship of any contractor access control codes will be changed immediately through an amendment to this agreement.

c. All printouts of raw, unaggregated data will be kept under lock and key by the contractor and by the principal agent(s) (Principal Investigators) of the contractors.

d. Contractor employees and agents will be required to sign out for required printouts and, upon return of the printouts, to sign again. Logbooks will be maintained under lock and key by

_____

(i.e., the senior contract employees or by the principal agents (Principal Investigators)).

e. Remote, direct access to raw data of confidential nature by contractor employees and/or agents will be by dual coding, i.e., two persons will be required to achieve access, each possessing a code number known and maintained only by himself or herself. The computer addressed should log both numbers prior to allowing access. A monthly tabulation, by day, of access/code numbers logged will be forwarded to the NMFS Regional Office.

f. All printouts and other documents containing confidential data, when surplus to the needs of the contractor employees or agents, will be returned to NMFS.

3. Identification of persons or organizations who will have access to data under this agreement.

4. The contractor hereby holds NMFS, NOAA, DOC, and the United States harmless for any civil suit that may arise from the misuse by the contractor of the subject data.

5. The contractor agrees to notify NMFS of the filing of or notice of the probability of a civil suit being filed against the contractor involving the subject data.

6. The contractor agrees to notify the appropriate NMFS Regional office on termination of access need on the part of any contractor employee and agent.

B. Federal

The NMFS, _____ Region, shall provide to the contractor on request:

1. a current identification of Federally-collected fishery-related data as specified in the agreement; and

2. a means of access to the data as currently available in computerized format.

V. General Understanding

It is understood between the parties to this agreement that the contractor may let subcontracts to private and public organizations for the access, collation, analysis, and/or storage of the subject data; and that such contracts shall include a provision incorporating all of the safeguards, certificates, prohibitions, and limitations of this agreement. The contracts will include at a minimum:

A. an identification of those people who would have access to the data;

B. incorporation of the access safeguards found in section IV(A)(2); and

C. provision for the execution of employee certificate(s) as required by this agreement.

VI. Safeguards

The _____ on behalf of itself, its employees, contractors, and agents specifically agrees:

A. to establish and maintain procedures for preserving the confidentiality of the data made accessible to it under this agreement;

B. to provide the _____ appropriate NMFS Regional Office with a description of the procedures specified in paragraph VI(A) of this section so that their effectiveness may be determined and evaluated, and to make any changes in such procedures as may be requested;

C. not to disclose any data in a manner that is inconsistent with this agreement.

VII. Review and Amendments

A. This agreement will be reviewed periodically, but not less than annually. It may be subject to reconsideration at such other times as may be required or requested and as agreed to by the parties entering into the agreement.

B. This agreement may be amended at any time by the mutual consent of the parties entering into the agreement.

VIII. Other Provisions

Nothing herein is intended to conflict with current NOAA or NMFS orders. If the terms of this agreement are inconsistent with controlling NMFS orders, then those portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions of this agreement not affected by any inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, such changes as are deemed necessary will be accomplished by either an amendment to this agreement or by entering into a new agreement, which ever is deemed expedient to the interest of both parties.

Should disagreement arise as to the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be reduced to writing by each party and presented to the other party for consideration at least 14 days prior to forwarding to the Assistant Administrator for Fisheries for appropriate resolution.

IX. Terms of Agreement

The terms of this agreement will become effective upon the signature of both the approving officials of NMFS and the contractor entering into this agreement.

The terms of this agreement will remain in effect for the period of the contract unless terminated by (1) mutual agreement, (2) (specific date) with advanced (60-day) written notice by either party for cause or (3) the operation/terms of this agreement, whichever shall first occur.

Signature for Contractor	Printed Name & Title	Date
Signature for NMFS	Printed Name & Title	Date

C E R T I F I C A T E

Date:

This is to certify that:

1. As a (temporary) (full-time) (contractual) employee of the _____, I have need for access to and for usage of certain written records, data files, and data banks pertaining to fisheries matters; and that:

2. I am fully aware of the civil and criminal penalties prescribed by law for Federal employees who would misuse or otherwise violate the confidentiality of such data; and that

3. To gain the necessary access and usage, I request that I be considered as a Federal employee, for the sole purpose of the laws regarding confidentiality of data, but that no remuneration or other benefit shall accrue as a result.

_____ _____

Signature of Employee Signature of Witness

Approved until otherwise notified; as per conditions of the Agreement of Access dated _____, of which this certificate is made a part.

_____

Signature of Contractor's Representative

_____

Printed Name and Title of
Contractor's Representative

APPENDIX II

50 CFR Part 600

Subpart E--Confidentiality of Statistics

§ 600.405 Types of statistics covered.

NOAA is authorized under the Magnuson Act and other statutes to collect proprietary or confidential commercial or financial information. This part applies to all pertinent data required to be submitted to the Secretary with respect to any FMP including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing occurred, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, U.S. fish processors.

§ 600.410 Collection and maintenance of statistics.

(a) General. (1) All statistics required to be submitted to the Secretary are provided to the Assistant Administrator.

(2) After receipt, the Assistant Administrator will remove all identifying particulars from the statistics if doing so is consistent with the needs of NMFS and good scientific practice.

(3) Appropriate safeguards as specified by NOAA Directives, or other NOAA or NMFS internal procedures, apply to the collection and maintenance of all statistics, whether separated from identifying particulars or not, so as to ensure their confidentiality.

(b) Collection agreements with states. (1) The Assistant Administrator may enter into an agreement with a state authorizing the state to collect statistics on behalf of the Secretary.

(2) NMFS will not enter into a cooperative collection agreement with a state unless the state has authority to protect the statistics from disclosure in a manner at least as protective as these regulations.

§ 600.415 Access to statistics.

(a) General. In determining whether to grant a request for access to confidential data, the following information will be taken into consideration:

(1) The specific types of data required;

(2) The relevance of the data to conservation and management issues;

(3) The duration of time access will be required: continuous, infrequent, or one-time; and

(4) An explanation of why the availability of aggregate or non-confidential summaries of data from other sources would not satisfy the requested needs.

(b) Federal employees. Statistics submitted as a requirement of an FMP and that reveal the identity of the submitter will only be accessible to the following:

(1) Personnel within NMFS responsible for the collection, processing, and storage of the statistics;

(2) Federal employees who are responsible for FMP development,

monitoring, and enforcement;

(3) Personnel within NMFS performing research that requires confidential statistics;

(4) Other NOAA personnel on a demonstrable need-to-know basis; and

(5) NOAA/NMFS contractors or grantees who require access to confidential statistics to perform functions authorized by a Federal contract or grant.

(c) State personnel. Upon written request, confidential statistics will only be accessible if:

(1) State employees demonstrate a need for confidential statistics for use in fishery conservation and management; and

(2) The state has entered into a written agreement between the Assistant Administrator and the head of the state's agency that manages marine and/or anadromous fisheries. The agreement shall contain a finding by the Assistant Administrator that the state has confidentiality protection authority comparable to the Magnuson Act, and that the state will exercise this authority to limit subsequent access and use of the data to fishery management and monitoring purposes.

(d) Councils. Upon written request by the Council Executive Director, access to confidential data will be granted to:

(1) Council employees who are responsible for FMP development and monitoring.

(2) A Council for use by the Council for conservation and management purposes, with the approval of the Assistant Administrator. In addition to the information described in paragraph (a) of this section, the Assistant Administrator will consider the following in deciding whether to grant access:

(i) The possibility that Council members might gain personal or competitive advantage from access to the data; and

(ii) The possibility that the suppliers of the data would be placed at a competitive disadvantage by public disclosure of the data at Council meetings or hearings.

(3) A contractor of the Council for use in such analysis or studies necessary for conservation and management purposes, with approval of the Assistant Administrator and execution of an agreement with NMFS as described by NOAA Administrative Order (NAO) 216-100.

(e) Prohibitions. Persons having access to these data are prohibited from unauthorized use or disclosure, and are subject to the provisions of 18 U.S.C. 1905, 16 U.S.C. 1857, and NOAA/NMFS internal procedures, including NAO 216-100.

§ 600.420 Control system.

(a) The Assistant Administrator maintains a control system to protect the identity of submitters of statistics required by an FMP. The control system:

(1) Identifies those persons who have access to the statistics;

(2) Contains procedures to limit access to confidential data to authorized users; and

(3) Provides for safeguarding the data.

(b) This system requires that all persons who have authorized access to the data be informed of the confidentiality of the data. These persons are required to sign a statement that they:

(1) Have been informed that the data are confidential; and

(2) Have reviewed and are familiar with the procedures to protect confidential statistics.

§ 600.425 Release of statistics.

(a) The Assistant Administrator will not release to the public any statistics required to be submitted under an FMP in a form that would identify the submitter, except as required by court order. Release as required by court order will be made only after approval of the NOAA Office of General Counsel.

(b) All requests from the public for statistics submitted in response to a requirement of an FMP will be processed consistent with the NOAA FOIA regulations (15 CFR part 903), NAO 205-14, Department of Commerce Administrative Orders 205-12 and 205-14 and 15 CFR part 4.

(c) NOAA does not release or allow access to confidential information in its possession to members of Council advisory groups.